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13 Cross-defendant CHURCH OF  
14 SCIENTOLOGY INTERNATIONAL

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HUB LAW OFFICES

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 FOR THE COUNTY OF MARIN

17 CHURCH OF SCIENTOLOGY ) CASE NO. 157 680  
18 INTERNATIONAL, a California not- )  
19 for-profit religious corporation; ) MEMORANDUM OF POINTS AND  
20 Plaintiffs, ) AUTHORITIES IN SUPPORT OF  
21 vs. ) CROSS-DEFENDANT CHURCH OF  
22 ) SCIENTOLOGY INTERNATIONAL'S  
23 ) MOTION TO STRIKE GERALD  
24 ) ARMSTRONG'S VERIFIED CROSS-  
25 ) COMPLAINT FOR ABUSE OF  
26 ) PROCESS OR IN THE  
27 ) ALTERNATIVE TO STRIKE  
28 ) PORTIONS THEREOF  
29 )  
30 ) DATE: February 11, 1994  
31 ) TIME: 9:00 a.m.  
32 ) DEPT: 1  
33 )  
34 ) DISCOVERY CUT-OFF: None  
35 ) MOTION CUT-OFF: None  
36 ) TRIAL DATE: None  
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I.

INTRODUCTION

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3 This is a fraudulent conveyance action. Plaintiff, Church  
4 of Scientology International ("the Church"), has set forth in its  
5 Complaint the specific actions of defendant Gerald Armstrong and  
6 others in conveying. Rather than responding in a concise and  
7 appropriate manner to plaintiff's complaint or setting forth a  
8 plain statement of his claims for relief by way of cross-claim,  
9 defendant Gerald Armstrong ("Armstrong") has chosen to make the  
10 files of this Court a soapbox from which to castigate plaintiff,  
11 its personnel, its lawyers and the Scientology faith. As set  
12 forth in full in the accompanying motion, the vast majority of  
13 the Cross-Complaint, more than 40 paragraphs, contain material  
14 which is irrelevant, false and improper. Most of the material is  
15 scandalous and inflammatory on its face. None of it is relevant  
16 or necessary to any claims; indeed, much of it consists of  
17 allegations of things which supposedly happened to other people,  
18 or which are so remote in time as to be beyond the scope of any  
19 relevant statutes of limitations. Armstrong's apparent purpose  
20 in including this vituperative and irrelevant material is to  
21 create prejudice and distrust of plaintiff by sensationalism,  
22 rather than to litigate the facts of this case.

23 Further, Armstrong has included in his Cross-Complaint a  
24 request for punitive damages in violation of Civil Code § 425.14.  
25 All of these matters must be stricken from the Cross-Complaint.

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1 II.

2 IRRELEVANT, IMPROPER AND SCANDALOUS MATTER INSERTED  
3 INTO A COMPLAINT MAY BE STRICKEN BY THE COURT

4 California Code of Civil Procedure section 436 permits the  
5 Court to "strike out any irrelevant, false, or improper matter  
6 inserted in any pleading," and to "strike out all or any part of  
7 any pleading. . . ." C.C.P. §436. Pursuant to C.C.P. §431.10,  
8 "irrelevant matter" as used in §436 is the same as an "immaterial  
9 allegation" contained in a pleading, which is defined by  
10 §431.10(b) as:

11 (1) An allegation that is not essential to the  
12 statement of a claim or defense;

13 (2) An allegation that is neither pertinent to nor  
14 supported by an otherwise sufficient claim or defense;

15 (3) A demand for judgment requesting relief not  
16 supported by the allegations of the complaint or cross-  
17 complaint.

18 As demonstrated below, Armstrong's Cross-Complaint contains  
19 all three types of immaterial allegations, all of which should be  
20 stricken.

21 **A. The Cross-Complaint Is Filled With Conclusionary,**  
22 **Evidentiary, Irrelevant, Improper And Unnecessarily**  
23 **Inflammatory Allegations. These Allegations Must Be**  
24 **Stricken.**

25 The rule is well-established, in California and elsewhere,  
26 that the Court may order stricken from a complaint matters which  
27 are irrelevant, scandalous or improper. Fisher v. Larsen (1983)  
28 138 Cal.App.3d 627, 646-647, 188 Cal.Rptr. 216, 230, cert. den.

1 464 U.S. 959, 104 S.Ct. 390; Hill v. Wrather (1958) 158  
2 Cal.App.2d 818, 823, 323 P.2d 567, 569. Matters such as the  
3 inflammatory terms and religious invective used herein by  
4 Armstrong have been held to be properly stricken. See, e.g.,  
5 Bartling v. Glendale Adventist Medical Center (1986) 184  
6 Cal.App.3d 961, 970, 229 Cal.Rptr. 360, 364; Bernstein v. N.V.  
7 Nederlandsche-Amerikaansche Stoomvaart-Maatschappij (S.D.N.Y.  
8 1946) 7 F.R.D. 63, appeal dismissed, 161 F.2d 733, cert. denied  
9 332 U.S. 771, 68 S.Ct. 84. Moreover, matters which are remote as  
10 to time and parties, and which are therefore not essential or  
11 relevant to any statement or claim for relief, should also be  
12 stricken. C.C.P. §431.10(b)(1), (2).

13 Further, a complaint should state only ultimate facts, and  
14 need not recite the evidence upon which a party intends to rely.  
15 Indeed, "To uphold such a pleading is to encourage prolixity and  
16 a wide departure from the definiteness, certainty and perspicuity  
17 which it was one of the paramount objects sought to be enforced  
18 by the code system of pleading. . . ." McCaughey v. Schuette  
19 (1897) 117 C. 223, 225, 48 P. 1088.

20 Armstrong's Cross-Complaint is riddled with improper and  
21 immaterial invective. Armstrong asserts, for example, that the  
22 Church "is part of an international, money-making, politically  
23 motivated enterprise which subjugates and exploits its employees  
24 and customers with coercive psychological techniques, threat of  
25 violence and blackmail." Cross-Complaint, p. 3, ¶ 10. He  
26 repeatedly refers to his own alleged emotional state, although  
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1 his cross-claim is for abuse of process.<sup>1</sup> He accuses the  
2 Church, its lawyers and all of the millions of members of the  
3 Scientology faith of being "intelligence operatives," Cross-  
4 Complaint, passim, who "attempted murder," id., ¶ 10, "use[]  
5 lies," "file[] perjurious declarations," id., ¶ 48, and have the  
6 intention of "neutraliz[ing]" Armstrong, id., ¶ 50. All such  
7 scandalous and vituperative allegations should be stricken.

8 Moreover, the Cross-Complaint contains many pages of  
9 allegations that are without relevance to Armstrong's abuse of  
10 process claim because they concern events which, if they  
11 occurred, did not happen to Armstrong, or which reflect matters  
12 barred by relevant statute of limitations. The Cross-Complaint  
13 contains paragraph after paragraph regarding events which  
14 allegedly occurred in 1986 through 1992.<sup>2</sup> Even assuming  
15 arguendo that the events recited were or could have been relevant  
16 to a claim of abuse of process, any such claimed event which  
17 occurred prior to November 30, 1992 is barred by the statute of  
18 limitations. C.C.P. §340(3). These irrelevant allegations are

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20 <sup>1</sup> See, e.g., Armstrong's allegations in paragraph 24 that  
21 actions alleged "are intended to bring about ARMSTRONG's mental  
22 disintegration and total destruction, are conscious and  
23 premeditated acts by Scientology of Fair Game, and have caused  
24 ARMSTRONG great anguish;" Cross-complaint, p.12; Armstrong's  
25 assertion that actions of his own lawyer and a lawyer representing  
26 cross-defendants (neither of whom are named parties to the Cross-  
27 complaint) created a "trap" which "caused ARMSTRONG great distress  
28 and grief;" Cross-complaint, p. 17, para. 39; and Armstrong's  
claims that filing affidavits or the alleged dissemination of  
documents "caused ARMSTRONG great emotional distress," Cross-  
complaint, p. 20, para. 44, or "caused ARMSTRONG great  
embarrassment and emotional distress;" Id., para. 45. These are  
just a few examples; such inflammatory and irrelevant statements  
pervade the cross-complaint.

<sup>2</sup> See, e.g., Cross-complaint, para. 9; para. 10; para. 20;  
paras. 22 - 53.

1 improper and also scandalous in content. They, too, must be  
2 stricken.

3 Indeed, courts need not tolerate venomous attacks such as  
4 Armstrong's in pleadings. Faced with pleadings remarkably like  
5 Armstrong's, the Court in Pollack v. Aspbury (S.D.N.Y. 1953) 14  
6 F.R.D. 454, cert. den. (1954) 347 U.S. 914, 74 S.Ct. 479, ordered  
7 the complaint stricken. In that case, the plaintiff sued fifty  
8 individual and corporate defendants, alleging a "far flung and  
9 evil conspiracy" to deprive him of real property, extort him,  
10 assault him, and separate him from his wife and children. Id. at  
11 455. Plaintiff Pollack vigorously attacked the persons and  
12 corporations named as defendants, calling them, inter alia, "a  
13 graft ridden lot," a couple of "mad crazy sex maniacs," a "double  
14 crosser, a swindler, and a shyster." Id. at 456. After  
15 reviewing the complaint, the Court held:

16 [P]laintiff's complaint is a long series of  
17 unrestrained and venomous attacks upon persons and  
18 corporations against whom he has a grudge. It is  
19 indecent, and violative of every rule of pleading of  
20 which I have knowledge. It should not be permitted to  
21 pollute the records of this Court. Consequently, I  
22 will direct that it be stricken from the files of the  
23 Clerk.

24 Pollack v. Aspbury, 14 F.R.D. at 456.

25 Armstrong's Cross-Complaint is similarly venomous. Indeed,  
26 Armstrong does not even allege that the cross-defendants did  
27 anything; rather, he asserts that all the conduct complained of  
28 was done by "Scientology," as if every member of this recognized,

1 worldwide faith should be held liable for these imagined  
2 wrongs.<sup>3</sup> Under these circumstances, the Court is well within  
3 its rights to strike the Cross-Complaint from its records.

4 **B. Armstrong's Claim For Punitive Damages Must Be Stricken**  
5 **Because He Has Not Fulfilled The Requirements of C.C.P.**  
6 **Section 425.14**

7 Armstrong alleges that he is entitled to an award of  
8 punitive damages for the cause of action alleged in his Cross-  
9 Complaint. Prayer, p. 30, ¶ 2. This allegation must be stricken  
10 for failure to comply with the provisions of C.C.P. § 425.14  
11 which states in relevant part:

12 No claim for punitive or exemplary damages  
13 against a religious corporation or a religious  
14 corporation sole shall be included in a complaint or  
15 other pleading unless the court enters an order  
16 allowing an amended pleading that includes a claim for  
17 punitive or exemplary damages to be filed. The court

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18 <sup>3</sup> Scientology is, in fact, a popular and fast-growing  
19 religion, with over 1,100 churches, missions and groups in its  
20 ecclesiastical hierarchy. [Ex. A.] Armstrong, along with a  
21 handful of other former members, has attempted for years to  
22 convince the public that Scientology was not a religion, but a  
23 "cult," that should be ridiculed, sued, and destroyed. They  
24 pointed repeatedly to the Church's 40-year battle for recognition  
25 by the Internal Revenue Service as a tax-exempt charitable  
26 organization as a sign that the Church was "bad" and its doctrines  
27 "tortious." Those days are over. In October, 1993, after the  
28 longest and most arduous investigation in its history, the Internal  
Revenue Service granted tax exempt status to every American Church  
of Scientology, including Church of Scientology International.  
[Ex. B.] The exemptions, which were granted only after full  
consideration of all the allegations made against the Churches by  
civil litigants, including the Rows and their proposed witnesses,  
are retroactive to the incorporation date of the Churches. [Ex. C,  
Declaration of Lynn R. Farny.] The 12 linear feet of material  
which the IRS considered can be viewed in the IRS's public reading  
room. [Id.]

1 may allow the filing of an amended pleading claiming  
2 punitive or exemplary damages on a motion by the party  
3 seeking the amended pleading and upon a finding, on the  
4 basis of supporting and opposing affidavits presented,  
5 that the plaintiff has established evidence which  
6 substantiates that plaintiff will meet the clear and  
7 convincing standard of proof under Section 3294 of the  
8 Civil Code.

9 The Church is a California non-profit religious corporation.  
10 [Ex. D.] It is plain from the Court's file in this case that  
11 Armstrong has not fulfilled any of the substantive or procedural  
12 pre-conditions for claiming punitive damages from a religious  
13 corporation as set forth in Civil Code § 3294 and C.C.P. §  
14 425.14. Paragraph 2 of the prayer for the second cause of action  
15 must accordingly be stricken from the Cross-Complaint.

16 **III.**

17 **CONCLUSION**

18 Armstrong has used his Cross-Complaint to infect this  
19 Court's records with page after page of irrelevant venom. Most  
20 of his allegations concern matters far outside the scope of the  
21 single cross-claim, and constitute his own anti-religious fervor.  
22 Pursuant to C.C.P. §§436, 431.10, and 425.14, these allegations  
23 have no place in the pleadings. Accordingly, the Church requests  
24 that this Court strike the Cross-Complaint in its entirety, or,  
25 in the alternative, strike from the Cross-Complaint all of the

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paragraphs and portions thereof set forth in the notice of motion.

DATED: January 4, 1994

Respectfully submitted,

BOWLES & MOXON

By: *Laurie J. Bartilson*  
Laurie J. Bartilson

Andrew H. Wilson  
WILSON, RYAN & CAMPILONGO

Attorneys for Plaintiff and  
Cross-Defendant  
CHURCH OF SCIENTOLOGY  
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA            )  
  )    ss.  
COUNTY OF LOS ANGELES        )

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On January 3, 1994, I served the foregoing document described as MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CROSS-DEFENDANT CHURCH OF SCIENTOLOGY INTERNATIONAL'S MOTION TO STRIKE GERALD ARMSTRONG'S VERIFIED COMPLAINT FOR ABUSE OF PROCESS OR IN THE ALTERNATIVE TO STRIKE PORTIONS THEREOF on interested parties in this action,

by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

by placing  the original  true copies thereof in sealed envelopes addressed as follows:

FORD GREENE  
HUB Law Offices  
711 Sir Francis Drake Blvd.  
San Anselmo, CA 94960-1949

MICHAEL WALTON  
707 Fawn Drive  
San Anselmo, CA 94960

BY MAIL

\*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on January 3, 1994 at Los Angeles, California.

\*\* (BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

\*\* Such envelopes were hand delivered by Messenger Service

Executed on \_\_\_\_\_, at Los Angeles, California.

(State) I declare under penalty of the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Signature

\* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

\*\* (For personal service signature must be that of messenger)